

payment is being made. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically. For EFT payments, OWCP is entitled to presume receipt and acceptance of that payment once a recipient has had an opportunity to receive a statement from their financial institution.

§ 10.431 What does OWCP do when an overpayment is identified?

Before seeking to recover an overpayment or adjust benefits, OWCP will advise the beneficiary in writing that:

- (a) The overpayment exists, and the amount of overpayment;
- (b) A preliminary finding shows either that the individual was or was not at fault in the creation of the overpayment;
- (c) He or she has the right to inspect and copy Government records relating to the overpayment; and
- (d) He or she has the right to present evidence which challenges the fact or amount of the overpayment, and/or challenges the preliminary finding that he or she was at fault in the creation of the overpayment. He or she may also request that recovery of the overpayment be waived.

§ 10.432 How can an individual present evidence to OWCP in response to a preliminary notice of an overpayment?

The individual may present this evidence to OWCP in writing or at a pre-recoupment hearing. The evidence must be presented or the hearing requested within 30 days of the date of the written notice of overpayment. Failure to request the hearing within

this 30-day time period shall constitute a waiver of that right.

§ 10.433 Under what circumstances can OWCP waive recovery of an overpayment?

(a) OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in regard to receipt of their benefits. Such care includes reporting events which may affect entitlement to or the amount of benefits, including reviewing their accounts and related statements (including electronic statements and records from their financial institutions involving EFT payments). A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
 - (2) Failed to provide information which he or she knew or should have known to be material; or
 - (3) Accepted a payment which the recipient knew or should have known to be incorrect. (This provision applies only to the overpaid individual.)
- (b) Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.

§ 10.434 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

- (a) Adjustment or recovery of the overpayment would defeat the purpose of the FECA (see § 10.436), or